

Ethics & Fiduciary Duty

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UNC

Center for Public Leadership and Governance

North Carolina Association of County Commissioners

ESSENTIALS OF COUNTY GOVERNMENT

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Why Are You Here?

Legal Mandate

§ 160A-87. Ethics education program required.

(a) All members of governing boards of cities, counties, local boards of education, unified governments, sanitary districts, and consolidated city-counties shall receive a minimum of two clock hours of ethics education within 12 months after initial election or appointment to the office and again within 12 months after each subsequent election or appointment to the office.

(b) The ethics education shall cover laws and principles that govern conflicts of interest and ethical standards of conduct at the local government level.

(c) The ethics education may be provided by the North Carolina League of Municipalities, North Carolina Association of County Commissioners, North Carolina School Boards Association, the School of Government at the University of North Carolina at Chapel Hill, or other qualified sources at the choice of the governing board.

(d) The clerk to the governing board shall maintain a record verifying receipt of the ethics education by each member of the governing board.

Ethics are the principles that guide your conduct and actions as a board member and a board.

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I, ... do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my officeso help me God."

North Carolina Constitution, Article VI, Sec. 7

A code of conduct to guide county officials in exercising their duties lawfully and with integrity and transparency.

Ethical Standards

Legal Obligations


County officials and staff must have legal authority to engage in any activity.

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How is this Different from State Ethics Training?

- State law requires covered persons to attend State Ethics training:
 - Includes Members of State Boards and Commissions
 - Includes Community College Boards of Trustees
 - Covers State ethics and lobbying laws
- If covered by G.S. 160A-87, must still attend local government ethics training



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Each board of county commissioners must adopt a code of ethics.

- 1 Ask for a copy of your board's code of ethics.
- 2 Review the code.
- 3 Discuss any questions/issues with other board members, county attorney, and county manager.
- 4 Suggest changes/additions.

Code of Ethics


1. Obey all applicable laws
2. Uphold integrity and independence of your office
3. Avoid impropriety in the exercise of your official duties
4. Faithfully perform the duties of your office
5. Conduct board business in an open and public manner

Resource on developing & implementing a code of ethics



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Follow All Applicable Laws



But the law does not allow us to do it...

WHAT STATUTE SAYS WE CAN'T DO IT???

We need to do this for our citizens...

What Statute Says We Can Do It?

A county may only undertake activities that it has been granted authority to undertake

Sources of Authority

- General Laws (eg Ch. 153A, 160D, 143)
- Local Acts

Limits on Authority

- Federal Law
- State Constitution
- State Regulations

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Uphold Integrity, Avoid Impropriety, & Faithfully Perform

Review sample Code of Ethics at your table and discuss

1. What duties do you owe to the public?
2. What duties do you owe to the county?
3. What duties do you owe to other board members?
4. What does it mean to act with integrity as a commissioner?
5. What is independent decision-making?
6. What else is involved in faithfully performing your duties?
7. How do you address conflict?
8. Who do you go to for help?

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Conduct Business in an Open & Public Manner

If following public records and open meetings laws, how do you conduct business?

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Duty to Vote

County commissioners have a **legal duty** to vote, imposed by statute.

Unless a statutory exception applies, a board member **must vote**.

There is no “general authority” to recuse—a statutory exception must apply.

§ 153A-44. Members excused from voting.
The board may excuse a member from voting, but only upon questions involving the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234, [or 160D-109]. For purposes of this section, the question of the compensation and allowances of members of the board does not involve a member's own financial interest or official conduct.

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When Not to Vote		
Does the Matter Involve	Do You Have A	If So . . .
Legislative Decision Regarding a Development Regulation G.S. 160D-109(a)	Direct, substantial, and readily identifiable financial interest in the outcome of the matter	DON'T VOTE (Statutory prohibition)
Rezoning Petition or Zoning Text Amendment G.S. 160D-109(a)	Close familial, business, or other associational relationship with applicant for zoning text amendment or landowner of property subject to rezoning petition	DON'T VOTE (Statutory prohibition)
Quasi-Judicial Hearing G.S. 160D-109(d) (land use matters)	Fixed opinion prior to the hearing, undisclosed <i>ex parte</i> communications, close familial, business, or other relationship with an affected person, or financial interest in outcome	DON'T PARTICIPATE OR VOTE (Statutory prohibition)
Public Contract G.S. 14-234	Prohibited "direct benefit" that you or your spouse would derive under the contract	DON'T PARTICIPATE OR VOTE (Statutory prohibition)
All Other Matters G.S. 153A-44	Financial interest in the matter or the matter involves your own official conduct	MAY BE EXCUSED FROM VOTING (Statute authorizes board to excuse member from voting)
What is a "close familial" relationship? A spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. (G.S. 160D-109(f)).		

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What is a Financial Interest?

Board member *may* be excused from voting if the matter involves his or her "own financial interest"

Statute does not define "own financial interest"

Factors to consider:

- Number of people affected
- Extent of financial interest (positive or negative)
- Likelihood of impact



Financial Interest Continuum

Affects many people
Nominal impact
Remote likelihood

←————→

Affects board member only
Significant impact
Strong likelihood

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A County Commissioner's "Own . . . Official Conduct"

Board member *may* be excused from voting if the matter involves his or her "own . . . official conduct"

Statute does not define "official conduct"

Potential Excusal Scenarios:


- Voting to Censure a Member
- Voting to Excuse a Member from Voting on a Matter Involving a Member's "Own Financial Interest"



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Self-Benefiting in Public Contracting Prohibited

G.S. 14-234



Making or administering a contract


If you're involved at any point in the contracting process, you're involved in "making or administering" the contract



Direct benefit to you or your spouse

There's a **direct benefit** if you or your spouse:

1. Own more than 10% of the company,
2. Receive income or commission from the contract, or
3. Acquire property under the contract



Class 1 misdemeanor & Void Contract*

Cannot be cured by excusing board member from voting

*Unless an exception applies

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Self-Benefiting in Public Contracting Exceptions

G.S. 14-234(b)(1)-(4), (d1)-(d5)

Certain types of contracts do not trigger a violation:

1. Banks and regulated utilities contracts
2. Friendly condemnation
3. Spouse employment contracts
4. Public assistance programs
5. Certain grants under 14-234(d3)
6. Grants or other financial assistance from the Tobacco Trust Fund under certain circumstances per 14-234(d4)
7. Public hospitals under 14-234(d5)

8. Small Jurisdiction Exception*

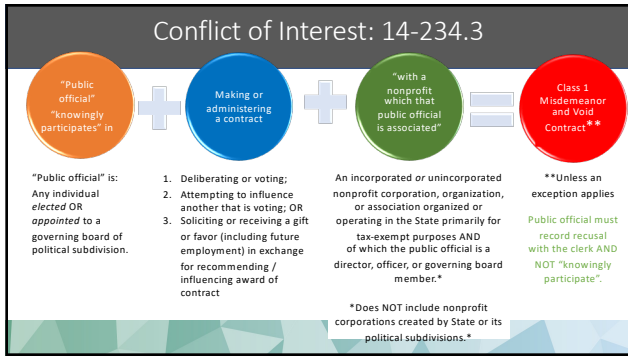
- Cities with a population of less than 20,000
- **Counties that contain no city with a population of greater than 20,000**
- Contract for medical services cannot exceed \$20,000 and a contract for goods or services cannot exceed \$60,000

* Does not apply to public building contracts

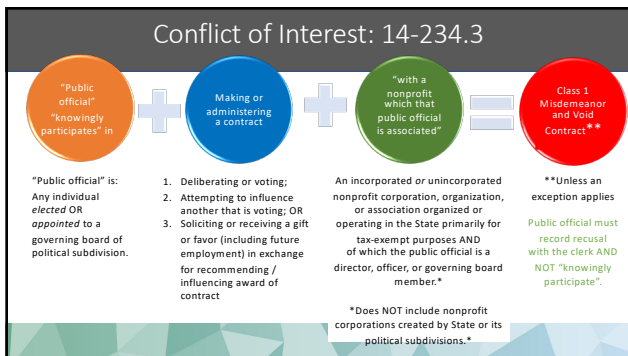
Requirements for the small jurisdiction exception:

- Must be approved at regular meeting in open session
- The conflicted public official cannot participate in any way
- The total annual amount of contracts with each official must be specifically noted in the audited annual financial statement
- The governing board must post in a conspicuous place a list of all officials with whom such contracts have been made, briefly describing the subject matter of the undertakings or contracts and showing their total amounts. This list shall cover the preceding 12 months and must be updated at least quarterly

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Is It Legal? Spouse Marketing

A board of county commissioners wants to hire a marketing and PR agency to help it draft social media policies and provide training on board members' and employees' social media use. Can the board hire the marketing firm that employs one of the commissioner's husbands?

Is it legal?



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Is It Legal? Sister Contractor

A county board of commissioners is considering awarding a multi-million dollar construction contract to a commissioner's sister. The sister's company is the lowest responsive, responsible bidder.

Is it legal for the commissioner to vote on her sister's construction contract?



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Is It Legal? Council Member Engineer

An engineer under contract with the county to design an upgrade to the county's water system is elected to the board of county commissioners.

Is it legal for the county to continue to use the commissioner's engineering services after she takes office?



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Is It Legal? Nonprofit Board


A county commissioner also serves on the Boys and Girls Club Board of Directors. The Club is seeking grant funds from the county for after-school programs. The potential grant contract comes before the board of commissioners for consideration.

Is it legal for the county commissioner to participate in the discussions and vote on the grant contract?



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Excusal v. Recusal



"EXCUSED" FROM VOTING

- own financial interest; official conduct; exceptions to contract prohibition; and non-profit contracts
- other board members decide/vote
- member whose potential interest or conduct should not vote

"RECUSAL"

- land use matters

"OBJECTION"

- if member does not **recuse** → remaining members vote on objection

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Practitioner's Advice

- Fine tune your ethical (and political) antenna
- Consult with your attorney
- Make a plan
- Consider whether to publicly disclose and get "cover," even when there is not a disqualifying conflict

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Gifts and Favors




Cannot solicit or receive any gift, favor, or promise of reward in exchange for influencing or attempting to influence the award of a contract

Class 1 Misdemeanor!

G.S. 14-234(a)(3)

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Gifts and Favors



If you award or administer public contracts, you cannot receive a gift or a favor from a contractor

Past, present or future contractor

Class 1 Misdemeanor!

G.S. 133-32

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Gifts and Favors



Gifts to the County?

- Transportation, food, lodging for county business?
- Consider addressing in your Code of Ethics
- Approvals/ Reporting?

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Fiduciary Duty

What's Your Board's Role?

What's Your Role?

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Gaston town clerk issued unauthorized loans, commingled personal funds, auditors find

Gates County sheriff, three deputies arrested for double dipping

Former leaders embezzled more than \$1 million from town of Landis, SBI says

Former NC airport employees guilty of embezzlement

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In a conversation about another matter, the finance officer makes an off-the-cuff reference of his frustration with the election director because the election director did not follow the statutorily required process before entering into contractual agreements when purchasing new equipment. The finance officer tells you that it puts the finance officer in a difficult situation of having to violate the law to pay the invoices. According to the finance officer, the elections director often refuses to follow county finance policies, and the manager does not want to get involved. You are aware that the elections director, a popular public figure, and the county commissioners have had a challenging relationship in the past, with lots of power struggles.

How do you respond?

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Shared Governance within County Government			
Major State-Mandated Functions	Policy-Setting Authority	Funding Authority / Responsibility	Control Over Personnel
Law Enforcement	State, Sheriff, County Board	County Board	Sheriff (but County Board sets number of personnel and compensation)
Register of Deeds	State, County Board	County Board	Register of Deeds (but County Board sets number of personnel and compensation)
Public Schools	State, Local Board of Education	State, County Board	Local Board of Education
Public Health	State, Local Public Health Board/County Board	State, County Board	Local Public Health Board/County Board
Mental Health	State, Regional Mental Health Board	State, County Board	Area Mental Health Authority Board
Social Services	State, Local Social Services Board/County Board	State, County Board	Local Social Services Board/County Board
Elections	State, Local Board of Elections	State, County Board	Local Board of Elections (but county board sets total salary amount)
Community Colleges	State, Community College Board	State, County Board	Community College Board

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You're Responsible As An Individual, Too!


Sheriff James received \$2,665 check made out to "Washington County Detention"

Sheriff deposited \$2,000 in Sheriff's Office bank account and used rest for Sheriff's Office petty cash

Money used for Sheriff Office purposes

Sheriff did not follow LGBFCA requirements

Jury found Sheriff guilty of EMBEZZLEMENT



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What Now?

- Set expectation of full compliance with accountability
- Receive training on financial policies & reports
- Develop relationship with finance officer
- Appoint audit committee and/or internal auditor
- Establish whistleblower process
- Continuously review

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